

TESTIMONY OF ALBERT W. FRANKE III, SRA

REGARDING SECTION 2, H.B. 6510

AN ACT CONCERNING THE REGULATION OF PRIVATE TRANSFER FEES AND
THE VALUATION OF REAL ESTATE

INSURANCE AND REAL ESTATE COMMITTEE

TUESDAY, MARCH 8, 2011

Co-Chairman Crisco, Co-Chairman Megna and Members of the Committee,

My name is Albert Franke and I come before you again today as a certified general real estate appraiser and licensed real estate broker to speak against Section 2 of House Bill 6510, "*An Act Concerning the Regulation of Private Transfer Fees and the Valuation of Real Estate*". I am president of Albert W. Franke Associates, Inc., a real estate appraisal and consulting firm in New Haven and of Advisra, LLC, a real estate brokerage firm in Branford. I am past president of the Connecticut Chapter of the Appraisal Institute and a former member of the Appraisal Institute's national Board of Directors. I am also a member of the Connecticut Association of Realtors and National Association of Realtors. My opposition to Section 2 of the bill is three-fold:

I. Consumer Protection

Lenders relying upon a market analysis prepared by a real estate broker or agent does nothing to safeguard the interest of the borrower in a real estate purchase or refinance transaction. Further, it does nothing to promote the soundness and integrity of our financial system, once again leaving the taxpayer exposed to potential losses. We have witnessed the near collapse of our mortgage and finance industries over the last four years and are still climbing out of the rubble. Unscrupulous appraisers, without question, played a role in that. I have always said that I will take a good broker over a bad appraiser every day of the week. However, professional appraisers are required to have more experience, undertake specialized training to value property, and are subject to more rigorous standards and licensing requirements than real estate brokers and agents. Agents may have a bias or inherent conflict such as the prospect of obtaining a future listing from the lender or attorney client, or the desire to make a quicker sale so that they do not have to expend as much time, effort and advertising dollars. In 2005, I separated my brokerage business from my appraisal practice, legally and physically, specifically so there would not even be the perception of a conflict of interest.

Appraisal and brokerage are two distinct disciplines. The State has recognized this through different licensure categories and requirements. That line will be blurred as a consequence of this bill.

The argument will be put forth that this will benefit the consumer with lower fees and faster loan closings. If that is the case, why stop with market analyses by real estate agents? Why not let the lenders and attorneys use a free service like Zillow for an estimate of value? Why will we need rigorous standards and licensing requirements for appraisers when the State would condone exceptions? What will happen in the Connecticut courts when appraisers and real estate agents are testifying on opposite sides of an issue and each has an opinion of market value developed under different standards?

The argument that passage of this bill will benefit consumers is a red herring. Rather, it is a detriment. It will create a loophole through which profit-driven lenders can satisfy a regulatory requirement faster and less expensively, with an inferior, riskier product. This was the same argument presented eight years ago, when this committee saw through it and had the wisdom to promulgate mandatory licensing.

II. Confusion in the Marketplace

Appraisal? Evaluation? Market Analysis? BPO? CMA? Assessment? How many times are these terms used interchangeably by the public? This bill as written would permit someone other than a certified appraiser to opine as to what a property is worth in a business transaction where the taxpayers may have a stake, directly or indirectly. Like it or not, "appraisal" is the default term that most people would use. "The bank had my house appraised" would be the typical consumer's response. Not "the bank had a real estate agent come over to perform a market analysis, which is not really an appraisal, so they sort of know what my house is worth, but I saved money and got my loan quicker". How will judges handle conflicting testimony and evidence involving a property's value when faced with a market analysis and an appraisal? This committee should be clearing up this confusion, not adding to it.

III. Competency

To be clear, I have no dog in this fight. My brokerage firm has not and will not accept requests for market analyses by lenders or attorneys, as I do not want the appearance of a conflict of interest or the potential liability of producing something less than an appraisal for purposes other than obtaining a listing.

My appraisal practice will not suffer at all if this bill is passed as written. In fact, it and I will likely benefit from the fallout this bill will create. I have not done lender work in many, many years, so I will not be affected. Rather, my practice involves appraisal work done in connection with some form of litigation. There was the property in Greenwich where the real estate agents, bank appraiser and closing attorneys all missed a floating easement recorded on the land records. The result? Years of expensive litigation. Then there was the assessment appeal where the property owner's estimate of value presented at the Board of Assessment Appeals was prepared by the owner's real estate agent brother. No conflict there. There was the title claim in Clinton where the buyer's real estate agent didn't realize five other neighbors had a right to use his driveway and the seller's agent did not disclose this. This would have been clearly apparent with a thorough reading of the deed. I could go on and on with examples. My point is, passage of this bill will likely lead to more errors and omissions being made by unqualified people, with third party reliance, eventually resulting increased litigation in the best case scenario. Sure, I will remain busy as the court dockets become more clogged. But as a taxpayer, this bill is bad policy and is rife with potential problems.

I ask the Committee to leave mandatory licensing in place as it is today and to reject Section 2 of House Bill 6510. Thank you for the opportunity to be heard.

Albert W. Franke III, SRA
President

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